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SOME EXPERIMENTS IN DIRECT LEGISLATION

The twentieth legislative assembly of the State of Oregon, held January and February, 1899, adopted a joint resolution providing for the submission to the electors of that State of a Constitutional Amendment providing for the creation of a system of direct legislation known as the Initiative and Referendum. The joint resolution again passed the legislature at its twenty-first legislative assembly, held January and February, 1901. Under the then constitutional provision, it was necessary that a constitutional amendment be adopted by joint resolution of both houses of the legislature for two successive biennial legislative assemblies and then submitted to the people. Having been so adopted, the amendment was submitted to the people of the state of Oregon, at the general election held June 2nd, 1902, and adopted by a vote of 62,024 in favor and 5,668 opposed. The writer was one of the 5,668. The constitutional amendment is as follows:

"Section 1 of Article IV of the Constitution of the State of Oregon shall be, and hereby is, amended to read as follows:

"Section 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which

passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: 'Be it enacted by the people of the State of Oregon.' This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment until legislation shall be especially provided therefor."

It is hardly possible to offer any satisfactory explanation how this legislation, so radical in its nature, was adopted by so overwhelming a vote in so conservative a state as the State of Oregon. It will be remembered that Oregon was largely settled by New Englanders in its early history and the conservative spirit of New England has had a marked influence in its historical development. Oregon was the only state lying west of the Mississippi River that went through the Populist and silver agitation in 1896, and years preceding, without becoming inoculated with unsound theories of finance and government. It was the only state west of the Mississippi River that cast its electoral vote for the Gold Standard candidate for President of the United States in the election of 1896. Notwithstanding its traditional conservatism and this unparalleled record, a little group of theorists and agitators succeeded in obtaining not only a favorable action of two successive legislative assemblies on the foregoing amendment, but succeeded in obtaining, as above indicated, an overwhelming popular vote in support of the amendment proposed.

The initiative and referendum principles are now firmly established in the law-making machinery and jurisprudence of the

State of Oregon. Other states of the Union are now agitating the adoption of the same principles. It, therefore, becomes an interesting and an illuminating investigation to look into the results of this constitutional amendment in actual practice in the State of Oregon. Before going into detail, however, attention should be drawn to certain features of the amendment which are striking. The first is that the laws proposed by the initiative, no matter how faulty they may be in the draft, or how vicious in principle, are incapable of amendment and must be adopted or rejected in the form proposed.

Second:—The constitution may be amended in the same way that a law may be proposed. This practically does away with a written constitution.

Third:—The veto power of the Governor is taken away on measures upon which the initiative has been invoked by the legislature. *Kadderly v. Portland*, 44 Ore. 118.

Fourth:—The small number of voters required upon an initiative or referendum petition makes it very easy to either propose a law or an amendment to the constitution by the initiative process or to invoke the referendum on a legislative enactment.

The initiative and referendum amendment to the state constitution has received judicial consideration in the case of *Kadderly v. Portland*, 44 Ore. 118, where it is held that it does not conflict with the Constitution of the United States, Article IV, Section 3, guaranteeing to every state a republican form of government, since the representative feature of the former system still remains, the effect of the amendment being only to retain in the mass of the electors a larger share of the legislative power than theretofore. The Supreme Court in the same case held that statutes proposed and enacted by the people are subject to the same constitutional limitations as legislative statutes, and after their adoption, exist at the will of the legislature just as do other laws. The enemies of the amendment in the first legislature succeeding its adoption attempted to forestall the action of the referendum by the addition to bills enacted of a clause reciting that the acts in question were "necessary for the immediate preservation of the public peace, health and safety," and thus putting them into immediate effect by this emergency clause in accordance with another provision of the state constitution. The Supreme Court in the same case decided that as to whether or not any law was subject to this emergency clause was distinctly for the legislature

and not subject to be judicially reviewed. The Governor, however, who was thoroughly committed to the principles of the initiative and referendum, by the threat of the veto power has up to the present time compelled the legislature to discontinue the use of this emergency clause in cases to which it did not properly belong.

As to the operation of the initiative and referendum for the six years that have succeeded the adoption of the amendment to the constitution, it is not possible to speak in detail but only to point out some tendencies which have been developed. The constitution has been further amended in two important particulars—one beneficial and one doubtful.

The beneficial amendment was an attempt to remove the office of state printer, which had been a subject of great graft, to a point where a salary could be established by the legislature and the printer's compensation kept within reasonable bounds.

The other provision was a proposition whereby the legislature by joint action could submit an amendment to the constitution by action of only one legislative assembly instead of two successive legislative assemblies as before, and not only that, but could order a special election for the purpose.

The serious situation with reference to the constitution of the State of Oregon now is that it can be amended at any general election by the initiative process or by a previous joint resolution of one legislative assembly. In other words, the constitution of the State becomes nothing now but a compilation of statutes as easy to amend or repeal as an act of the legislative assembly. It thus no longer exists as a constitution but is a mere code subject to change at any time.

The operation of the initiative and referendum outside of the constitution, has not as yet been fraught with any serious abuse. That it is subject to serious danger of abuse and may become the prey of class legislation, was evidenced in 1905 at the time that the legislature of the State passed an act appropriating \$500,000 to be expended in the furtherance of the Lewis & Clark Centennial Exposition. A private corporation, called the Lewis & Clark Centennial Exposition, and having a capitalization practically the same as the State appropriation, but in addition to it, was engaged in constructing the exposition buildings in the City of Portland. Differences over wage schedules occurred between the officials of the exposition company and representa-

tives of organized labor. In order to force the exposition officials to their views of the wage schedule, the labor organizations of the city of Portland threatened and attempted to invoke the referendum on the Lewis & Clark appropriation bill. If they had succeeded in doing so, the Exposition would probably have been postponed for a year. The saving common sense of the people of Oregon prevented this catastrophe, but this incident shows clearly how the initiative and referendum system can be made use of by class interests to accomplish ulterior, and sometimes improper, ends.

Under the initiative procedure, there was enacted by the people at the general election held June 6th, 1904, a Direct Primary Nomination Law. At this election there were 56,285 votes cast in favor of the law and 16,354 against it. This law was the outcome of a propaganda of the same coterie of political thinkers who brought about the adoption of the initiative and referendum amendments to the constitution of Oregon. It has now been in operation long enough to fully illustrate its workings. It has eliminated and destroyed the "boss," but, at the same time, it has almost, if not entirely, from a practical standpoint, destroyed and eliminated political parties. Under its operation, no candidate can longer command with any degree of certainty, the support of the political party with which he is affiliated. In a state overwhelmingly republican in politics on national issues, it has so far destroyed party lines that a democratic governor has been elected by a substantial majority against a most worthy opponent. It has produced democratic mayors, district attorneys, sheriffs and other minor officers in communities overwhelmingly republican. The most serious menace that it threatens to the future of the commonwealth lies in the fact of the personal expense thrown upon a candidate for a public office. In a recent State election five candidates for the republican nomination for State treasurer spent \$50,000 for their primary election expenses for an office where the salary is \$4,500 per year.

Each candidate for office is obliged to make a double canvass:—

First:—At the primary election for the nomination of his political organization, and

Second:—At the final election against his opponents of other political faith.

Inasmuch as the State is so overwhelmingly republican, the contest is generally at the primary election. In the first contest,

he receives no assistance from any political organization and is obliged to make a gum shoe campaign from town to town and county to county at his own expense. If nominated, he receives scant support from his political organization at the main election, as the party disorganization has been so complete that little interest is taken by the persons who formerly contributed to campaign funds. These results are not entirely without benefit. Insofar as they enable worthy candidates of integrity to make a contest without pledge or fear of political bosses, the system has proved of great benefit. On the other hand, unscrupulous and dishonest candidates who have personal means at their command, are enabled to make successful campaigns where no political party or political boss, however corrupt, would have imperilled the organization by fathering their candidacy.

At the same election, June 6th, 1904, there was passed by initiative process, an act known as the Local Option Liquor Law, providing for precinct prohibition in accordance with the familiar principles of local option.

At the general election held June 4th, 1906, there was also enacted by initiative process an act levying a license on the gross receipts of express, telegraph and telephone companies.

At the general election held June 4th, 1906, there was enacted by the initiative process an act levying a license on the gross earnings of sleeping car, refrigerator car and oil companies.

At the general election held June 1st, 1908, the following amendments were voted on:

An amendment to the State constitution increasing the salary of members of the legislature, which was defeated.

An amendment to the State constitution permitting the location of State institutions elsewhere than at the seat of government, which was adopted.

An amendment to the State constitution increasing the number of judges of the Supreme Court from three to five, which was defeated, largely owing to having been coupled with certain radical changes in our entire judicial system.

An amendment to the State constitution changing the date of the regular general biennial elections from June to November, which was adopted.

An amendment to the State constitution providing for woman suffrage, which was defeated by a large majority.

An amendment to the State constitution giving additional and

exclusive power to cities and towns within their corporate limits to license, regulate, control and tax, or to suppress or prohibit theatres, race-tracks, pool-rooms, bowling alleys, billiard halls, and the sale of liquors subject to the Local Option Law (the claimed defect to this amendment will be to make a local community independent of State laws governing crime connected with the matters above set forth. This appeared to be an exceedingly vicious amendment and was supposed to be fathered by the liquor interests). This was defeated.

An amendment to the State constitution providing for the single tax (Henry George theory), which was defeated.

An amendment to the State constitution providing for a special election to discharge any public officer and elect his successor, commonly known as the "Recall," which was adopted.

An amendment to the State constitution providing for election by a majority vote instead of a plurality, and for proportional representation between the various political parties in accordance with the votes cast, which was adopted.

An amendment to the State constitution providing for an exclusively grand jury system and doing away with the present system of information by district attorneys, which was adopted.

Also the following laws:

A bill by the initiative process to prohibit fishing for salmon between certain dates, which was adopted.

A bill for a law instructing members of the legislature to vote for and elect the candidate for United States senator who receives the highest number of votes at the general election, which was adopted.

A corrupt practices act, which was adopted.

Another act with reference to the salmon industry, which was adopted.

A law creating a new county, which was adopted.

An act requiring common carriers to provide public officials with free transportation as a condition precedent to the exercise of the right of eminent domain, which was defeated.

Under the referendum branch of the law, a small disgruntled element in a single county of the State invoked the referendum upon an appropriation of \$125,000 per annum for the State university, which referendum was defeated.

Another referendum sought was on a bill concerning the custody of county prisoners, which was carried.

The referendum was also invoked against an appropriation for armories for the State national guard, and was carried.

It will be noted from the foregoing enumeration that there are nineteen acts under the initiative and referendum voted upon at the recent election. Oregon has the Australian or secret ballot system, so arranged that a cross must be made before the name of each candidate or subject to be voted on and it is not possible to vote a party ticket by a single cross as is the case in some states. The result of this system is a long and involved ballot, taking a good while to vote it. Add to this state of facts, the presence on the ballot of nineteen measures, to wit: Ten constitutional amendments by the initiative process, six acts proposed by the initiative process and three legislative acts upon which the referendum was invoked, and it can readily be seen that a voter must be not only exceedingly intelligent, but exceedingly well informed to be able to vote either wisely or intelligently.

The system brought about in the State of Oregon by the enactment of the initiative and referendum amendment to the State constitution in 1902, is only as yet in a formative condition. Up to the present time, it has not been the subject of serious abuse, with the exception of the attempt to invoke the referendum on the Lewis & Clark Centennial Exposition appropriation, which was frowned down by an almost unanimous public sentiment in view of a great State pride in a great undertaking, and with the further exception of the recent unwarranted and improper invoking of the referendum upon the present slender annual appropriation for the State university, so that the working of the referendum cannot be as yet legitimately attacked, but the cloud of amendments to the State constitution, which were before the electors at the recent election, indicate the extreme instability of our State constitution, and such measures as the "Recall" and proportional representation which have been adopted are widely at variance with our theories of popular government, as exemplified by the history of the republic. The single tax measure has not, in other sections of the world, received the support of the best thinkers, but was fortunately defeated.

Against the theoretical view of direct legislation little can be said. If communities were small and intelligent, and newspapers fair and unprejudiced, direct legislation ought to be a success. As to whether the great mass of voters in a big commonwealth will advise themselves sufficiently so as to be able to act intel-

ligently, and will so act, is one of the great questions connected with this form of legislation. It is too early yet in the experience of Oregon to answer this question.

Corruption of State legislatures by great financial interests desiring protection or unlawful enjoyment of their powers, by the liquor interests and by other special forms of private property, have thrown much discredit upon representative government under the old system. One proposition is sure—you may be able to corrupt a State legislature or a majority of it, but you cannot successfully corrupt the electors of an entire commonwealth. But the people, however, must have leaders, and public opinion is crystallized by the press. If popular leaders become corrupt and newspapers remain purchasable, it will be possible still to do wrong even under direct legislation.

One of the serious menaces that has grown up as a product of this system is the presence of an organization in the city of Portland which will enter into a contract to provide signatures either to initiative or referendum petitions or to nominate candidates under the direct primary law, at a regular schedule of rates from three to five cents per name. It can readily be seen that not merely is the public open to attack by reason of unwise legislation proposed by theorists and utopian dreamers, but that predatory interests by artfully drawn measures framed by wise constitutional lawyers can cause to be submitted amendments to the constitution and laws which will serve their purposes.

The State Press Association of Oregon, consisting of practically all the weekly newspapers spread over the entire 95,000 square miles of this great commonwealth, is bound together by resolution adopted at their last annual convention to publish no publicity matter for candidates for public office without the same being paid for at advertising rates. The metropolitan press of the city of Portland, with the possible exception of one paper, has taken a similar stand. In other words, the candidate, or the interest, that has money to spend has a tremendous handicap over those opposed under this no-party system of direct nomination and the present form of direct legislation.

On the whole, the system has not yet advanced to a point where it can be either indiscriminately praised or indiscriminately decried. So far the three-quarters of a million of Oregon's citizenry has not seriously abused its new-found power, and after all, the heart of the common people is sound.

Robert Treat Platt.